Recent Changes to the Medicaid Rules

The State of Indiana recently passed several new rules designed to implement changes to the Medicaid Law contained in the Deficit Reduction Act of 2005. These rules reflect some of the most significant changes to the Medicaid law in past twenty years. It is particularly important to be aware of these changes because many of them penalize very innocent behaviors such as making gifts and loans to family members and others, and investments in certain types of annuities.

Most families end up grappling with the Medicaid system when a loved one needs long-term care in a nursing home. Medicare covers only short-term stays in a nursing home, and then patients must pay privately until or unless they become eligible for Medicaid. Many of the recent changes make qualifying for Medicaid much more difficult.

Gifting Issues

The Medicaid rules punish most gifts made by an applicant in the several years preceding the date of application for Medicaid benefits. An applicant who has made gifts will generally be ineligible to participate in Medicaid for the number of months that the value of the gift could have paid for nursing home care. The recent changes affect how penalties are calculated, when they are implemented, and the length of time for which they must be disclosed in the Medicaid application process.

All gifts made prior to November 1, 2009 must be reported to the Medicaid office during the application process if made within three years of the date of application for benefits. This reporting period, also commonly referred to as the "lookback period" is expanded to five years for gifts made prior to November 1, 2009 if the gift involved a Trust. The lookback period for all gifts made on or after November 1, 2009 is five years, whether or not the gift involved a trust.

Perhaps the most significant change with regard to gifting is how the penalty is implemented. For gifts made prior to November 1, 2009, the penalty starts to run in the calendar month that follows the date of the gift. For example, a gift made in October 2009 that triggered a five month penalty would be implemented starting in November 2009 and would run through March 2010.

For gifts made on or after November 1, 2009, the start of the penalty is delayed until the person applying for Medicaid is in a nursing home and is financially eligible for Medicaid. The significance of this change is that the penalty does not start until you actually need Medicaid benefits. Therefore, all gifts, even relatively small ones, will cause potential problems for Medicaid eligibility for 5 years from the date the gift is made.

There are a couple of new exceptions to the gift penalty. The Medicaid office will ignore One Thousand Two Hundred Dollars ($1,200.00) of gifts made each year, so long as the gifts were made to a family member or a non-profit organization such as a church or charity. Please note that the $1,200 limit is applied to the total of all gifts made to individuals and non-profits, as opposed to applying to each person or non-profit. The Medicaid office may ignore a pattern of gifts if it was in place for at least 3 years prior to the date of the Medicaid application.

Loan Issues

Medicaid applicants will be penalized for loans they made on or after November 1, 2009 unless the loan meets very specific requirements. In order to avoid a Medicaid penalty the payback period of the loan must be shorter than the average life expectancy of the person making the loan. Also, the loan must start right away and provide for equal payments over the life of the loan, with no large balloon payment allowed at the end of the loan. Lastly, the terms of the loan must state that the loan cannot be cancelled in the event of the lender's death.

Most loans among family members are not even put in writing, let alone a writing that specifically addresses all of these new items. Also, it is not uncommon for a parent to lend money to a child, with the loan being forgiven in the event of the parent's death as part of the child's inheritance. If these rules are not followed exactly, it could put Medicaid recipients in quite a bind if they are subject to a Medicaid penalty based on the amount of the loan. To avoid the penalty they would have to depend on the loan recipient to be able to pay back the loan immediately.

Annuity Issues

Purchasing an annuity or making changes to an existing annuity after November 1, 2009 may trigger a Medicaid transfer penalty for many routine annuity transactions. For all non-qualified annuities (which are annuities purchased with non-retirement funds), a Medicaid transfer penalty is triggered, based on the full value of the annuity, unless the State of Indiana is named as a beneficiary of the annuity, up to the amount of Medicaid benefits provided by the State for the annuity owner, or the annuity owner's spouse. The State must be named as either the first beneficiary or the second beneficiary behind the spouse, a disabled child, or a minor child. One very significant aspect of this new rule is that the rule applies even to individuals who are not on Medicaid at the time the annuity is set up or changed. Therefore, it affects every non-qualified annuity transaction, even mad by perfectly healthy individuals who are not contemplating needing Medicaid benefits.